

900 56
21

NATIONAL DEFENSE UNIVERSITY

NATIONAL WAR COLLEGE

Sharing the Sword:

The War Powers Resolution

Core Course Essay

Bob Warrington/Class of 94
Core Course 3
Seminar K
Dr. Charles Stevenson
Dan Gaske

**NATIONAL DEFENSE UNIVERSITY
LIBRARY
SPECIAL COLLECTIONS**

Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE 1994		2. REPORT TYPE		3. DATES COVERED 00-00-1994 to 00-00-1994	
4. TITLE AND SUBTITLE Sharing the Sword: The War Powers Resolution				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) National War College, 300 5th Avenue, Fort Lesley J. McNair, Washington, DC, 20319-6000				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT see report					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES 14	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

Sharing the Sword: The War Powers Resolution

The 535 men and women of the House and Senate have an equal responsibility with the President in a matter so crucial to the American people as war. Their collective judgment is far more likely to be right than that of the President alone.

Jacob Javits¹

But micromanagement by a committee of 535 independent-minded individuals is a grossly inefficient and ineffective way to run any important enterprise. The fact is that depriving the President of flexibility weakens our country.

George Shultz²

Introduction

The 20 years that have elapsed since the War Powers Resolution (WPR) became law have not diminished any of the controversy to which it was born. Disputes involving its legality, practicability, and applicability have punctuated legislative-executive relations when decisions have been made to commit American troops abroad in which they faced an actual or imminent risk of military conflict. The controversy originates in the inherently ambiguous situations the legislation attempts to clarify, and in the contradictory opinions offered on the WPR's meaning, legitimacy, and relevancy. While almost no one challenges the President's power to repel sudden attacks against the territory of the United States (US), or the right of the Congress to commit the US to war, the WPR attempts to address those more equivocal cases involving the use of armed forces in the absence of a direct military threat to the US or a declaration of war. In doing so, the measure has become inextricably involved with more fundamental issues about the roles and powers of the President and Congress in authorizing the dispatch of US troops to conflicts abroad.

Although the President and Congress have periodically used control of the armed forces as a constitutional "invitation to struggle" for over 200 years, President Truman's 1950 decision to commit on his own authority American troops to a major conflict in Korea precipitated the most dramatic confrontation with Congress over this issue until that time. The debate over war powers was joined with greater intensity in the early 1970s with the US mired in a land war in Southeast Asia and encountering huge American casualties. As a result, Congress began to reevaluate its role to ensure timely participation in decisions affecting the deployment of US military forces throughout the world and the commitment of those forces to hostilities involving other states in the

international system. The outcome of these proceedings was the WPR, congressional joint legislation passed in 1973 over President Nixon's veto.

This paper is intended to examine the WPR from three perspectives. First, how the constitutional concept of "separate institutions sharing power" affects Congress's role and authority in decisions to go to war. Second, why post-World War II experiences--both at home and abroad--motivated Congress to enact the WPR. Third, how well the legislation has functioned given the intentions of its sponsors. To shape and direct the analytic approach used in this paper, the following hypothesis will be tested:

The War Powers Resolution adopted by Congress in 1973 was a necessary and correct reassertion of its Constitutional role and power in the decision to involve US military forces in conflicts involving other nations in the international system.

Congress, War Powers, and the Constitution

The wording of the Constitution does not settle the question of who has the ultimate authority to commit American military forces to hostilities or situations where hostilities are likely to develop.³ The claims of Congress for control rest on its Article I powers to "provide for the common defense;" to "declare war, grant Letters of Marque and Reprisal, and make rules concerning captures on land and water;" to "raise and support armies;" to "provide and maintain a navy;" and to "make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested. . .in the Government of the United States, or in any department or officer thereof." The President's claims for control over the use of military force are based on his Article II prerogative to be "commander-in-chief of the army and navy," and on his constitutional obligation to "take care that the laws are faithfully executed."

Most studies that evaluate the WPR place the legislation within a constitutional framework to assess how it affects the relationship of the executive and legislative branches in committing US forces to combat.⁴ In doing so, these studies inevitably depend in part upon assertions about the intent of the Framers in dispersing power between the Congress and the President.⁵ These assertions are to some degree necessarily speculative, but most constitutional scholars generally agree on four points in interpreting the Framers' views on war powers that are basic to understanding Congress's place in the process:

- Congress's role in initiating military action is not limited to declaring war. The Framers recognized that in addition to declared wars, more limited measures of force would not only be required, but would probably be more common. The contemporary rationale for this position was the Indian Wars which had accompanied the westward migration of settlers since the Revolution. The Framers fully anticipated that prior consultation between the legislature and executive would occur as a condition for permitting the use of military forces under these circumstances. Indeed, such consultations did occur in the period immediately following the ratification of the Constitution during wars with Indian tribes in the Northwest Territory. Military expeditions in 1790 and 1792 were debated in Congress and approved by appropriating funds for the campaigns and authorizing expansion of the army to carry them out.⁶
- The President on his own authority, except in response to a sudden attack on the US, could not make commitments beforehand involving the armed forces that would interfere with the right of the legislature to authorize the use of military measures. In his writings, Madison clearly recognized the power of the legislature to make up its mind, unhampered by the commitments of the President, on the use of American military force.⁷
- The President did, however, have full authority to direct and control the armed forces once authorization from Congress had been obtained. Congress had exercised direct operational control of the army under the Articles of Confederation. The Framers were aware that this arrangement had contributed to the army's ineffectual handling of uprisings by the tribes of the Six Nations between 1785-1787 because of a lack of sustained financial support and organizational chaos caused by each state being allowed to appoint and promote its own officers in the federal corps.⁸
- Nevertheless, Congress retained a role in governing the use of armed forces during a conflict through the power of the purse. Specifically, Congress was able to endorse military measures by exercising its power to "raise and support armies" to fight the war. Although the Framers presumed that a cooperative approach between the branches in deciding to initiate hostilities would encourage support for the enterprise until its completion, Congress quickly discovered the funding "stick" to signal displeasure with the President's handling of a war. For example, Congress's failure to raise taxes in early 1814 to

help finance the war against Britain was caused primarily by members' anger over President Madison's unwillingness to soften his terms for ending the conflict.⁹

Together, these constitutional powers give Congress an explicit, wide-ranging, and powerful grant of policy-making authority in decisions on the subject of peace or war. With such powers embodied in the Constitution, legislation to ensure "that the Congress be an active participant in the decision to commence hostilities" would appear superfluous. Congress's decision to pass the WPR in 1973, however, reflected its belief that the government's exercise of war powers had strayed from the Framers' original intent, and its concern that this distortion had produced disastrous consequences for the US in committing forces to combat abroad.

Expanded Executive Use of War Powers

Four developments occurred in the post-World War II world that appeared to undermine the Framers' effort to ensure that the President could not engage in war on his own: the establishment of a large standing army in peacetime; the militarization of American foreign policy; the ideological rivalry with the Soviet Union; and, the unpopularity of the Korean and Vietnam Wars.¹⁰

- The peacetime establishment of a large standing army after World War II allowed the President to involve the nation in war without congressional consent. The Framers, distrustful of the military because it had been used as an instrument of monarchical power, believed that the maintenance of small armies in peacetime would prevent the President from engaging in war unilaterally because he would require congressional authorization to "raise and support armies" with which to fight. While the practice of maintaining minimal military forces survived for 150 years, with a large standing army, the President now had enough forces at his command to commit the US to a substantial war without the need for congressionally-approved force augmentation. Congress's role, conversely, had shifted from making a positive commitment to war through troop expansion, to negating executive action by taking forces away from the President or withholding funds for military operations after the commencement of foreign military activities.
- As an ingredient of the Cold War, US foreign policy became more activist and militaristic. While neutrality and free trade had been the hallmarks of past US approaches to foreign affairs, East-West

political conflict compelled the US to take a position of leadership in the international system, pledge security commitments--especially through executive agreements--to other nations as an instrument of policy, and station large forces overseas to authenticate the American role as guarantor of peace. These conditions increased both the opportunity and likelihood for the President to make war on his own authority.

- The struggle with the Soviet Union also changed the character of traditional patterns of US military actions in undeclared wars. Geographically, conflicts became international versus hemispheric, ideological versus balance of power, systematic versus ad hoc, and rapidly developing versus slowly emerging. In confronting these circumstances, the President asserted more ambiguous justifications for using military force--the rationale of "vital interests" being most common--relied more heavily on military measures instead of other tools of coercive diplomacy such as economic sanctions, and decided more quickly to employ US military forces because of their presence overseas and technological advances in deploying them quickly.¹¹
- Finally, and in some respects most importantly, traditional US success in using its forces in undeclared wars before World War II was not maintained in the post-war period. In the past, almost every use of force overseas based on presidential authority had been against small, backward, and disorganized countries in Latin America. Military expeditions involved few US troops, were of relatively short duration, incurred marginal casualties, obtained their objectives (at least in the short term), and did not involve third party nations. The Korean and Vietnam Wars, however, did not follow these patterns, and the unfavorable experiences encountered in these conflicts contributed significantly to Congress's determination to reassert its role in any decision to use military force abroad.¹²

Congress Acts to Restore the Balance

Congressional anxiety over the executive's arrogation of expanded war-making authority, coupled with particularly egregious abuses of power by the Nixon Administration, convinced many members of Congress that imbalances in the shared power to make war must be rectified so that "we never get fooled again."¹³ The Vietnam War experience--especially US attacks into Cambodia and Laos that were undertaken without

congressional consultation or approval--indicated that sole reliance on constitutional powers was insufficient to ensure a meaningful congressional role in the decision to make war.¹⁴ Disagreements existed, however, over which legislative framework would be most effective in ensuring that Congress would be able to exercise its constitutional obligation when dispatching American troops into combat.

The final version of the WPR represented a compromise between competing congressional viewpoints--both within and between the Houses--and was enacted "in the hope of fostering constructive executive-legislative interaction in the decision to employ US forces abroad."¹⁵ While details of the WPR's genesis are beyond the scope of this study, understanding that the legislation reflected an effort to bridge different conflicting opinions on how best to proceed is important when attempting to evaluate its effectiveness.¹⁶ Recognition that a "middle course" was selected also helps explain criticisms voiced from widely divergent quarters that claim the legislation has not guaranteed Congress's active participation in war-making decisions since its adoption.¹⁷

How Well Has the WPR Worked?

Most participants in the debate over the WPR--both within and outside government--generally agree that the resolution has not worked as intended and is flawed both in concept and practicability.¹⁸ Within Congress, there is general agreement that Senator Sam Nunn (D.-GA) was correct when he stated, "The War Powers Resolution is 'broke' and should be fixed."¹⁹ Constitutional scholar Thomas M. Franck expressed a similar sentiment when he testified before Congress that, "The War Powers Resolution was a good idea; but its drafting and execution were faulty."²⁰ Presidential decisions to commit US forces abroad for combat over the last 20 years indicate that the executive has observed the requirements of the resolution only with the greatest reluctance, sufficing a minimum degree of compliance, and raising questions on every occasion about whether the resolution's stipulations had been adequately fulfilled.

Such attitudes support the belief that flaws exist in the current version of the WPR, and that it should be improved by amending the original language. Claims by Senator Claiborne Pell (D.-RI) and others that "the War Powers Resolution in its current form has failed," however, neglect trends over time that suggest gradational acquiescence to key features of the resolution by the executive, and a more encouraging record of observance of the legislation's spirit rather than of its letter.²¹ Examining three key components of the WPR--consultation,

reporting, and congressional action--reveals a progressive accretion of legitimacy and influence has occurred which, while irregular and tentative, suggests the WPR has worked better than many judge.²²

Consultation. In many respects, this is the key provision of the WPR because it is the only one of the three components that takes place before the President has committed US forces to war. In addition, this provision is based most heavily on a presumption of cooperation between the executive and legislative branches in deciding to commit American forces abroad. It is almost inconceivable that Congress would refuse to support any reasonably prudent presidential action that had been preceded by consultations with the Congress on its advisability and justification. Indeed, the other key components of the WPR--reporting and congressional action--can be interpreted as punitive measures to impose on a President who has undertaken military actions without prior congressional involvement in the decision process. Undoubtedly, consultation is the provision that addresses most clearly Congress's desire "to ensure its constitutional role in any decision to use military force."

Although administrations failed to consult in any meaningful way with Congress during the first 14 years of the WPR's existence, this attitude changed in 1987 after a series of bruising episodes in which the administration gradually recognized the costs of long and acrimonious debates over the lack of a real consultative process. The largely positive experiences in executive-legislative interaction since 1987, while not signalling executive branch submission to the WPR or guaranteeing that perfunctory consultations will not occur again, appear to suggest a turnabout in executive branch attitudes.²³ Whether this new trend represents a break from past practices remains unclear, but recent developments appear promising.²⁴

Reporting. All Presidents since 1973 have generally complied with the requirement to report to Congress in a timely fashion after executing one of three military actions specified in the legislation. At the same time, each has been careful to characterize such reports as "consistent with" the WPR to avoid any implied acceptance of its legitimacy or to start the 60-day clock in motion. The reports have been submitted within the statutory time-limit of 48 hours set in the WPR, and for this reason, enforcement of the provision has not been a problem. Although careful wording has allowed Presidents to submit reports without being "in compliance with" the WPR's requirements, it remains unclear whether this pattern would constitute a precedent should the WPR's constitutionality ever be tested in the courts.²⁵ Nevertheless, experience indicates Congress's intention in

establishing the WPR's reporting requirement has been largely achieved even if executive acceptance of the letter of the legislation has remained elusive.

Congressional Action. This has proven the most difficult provision to evaluate because of the executive branch's refusal to comply directly with the WPR's reporting requirement, thereby starting the 60-day clock. As a result, Congress has been left to determine when a situation exists that should start the clock, and although situations have arisen where the issue was considered, Congress has yet to make such a determination. The lack of a declaration has avoided an executive-legislative confrontation over the WPR's 60-day limitation on military involvements that have not received specific authorization by Congress. In addition, a second WPR stipulation that permits Congress at any time to enact a concurrent resolution requiring the withdrawal of US forces has also not been tested since 1973. Some legal scholars argue the concurrent resolution venue is unconstitutional, and they point to the Supreme Court's ruling in *INS v. Chadha* to support their position.²⁶ Other scholars, however, dispute this interpretation and argue that it remains valid because differences in the two cases make such linkages inappropriate.²⁷

It is not surprising, therefore, that the congressional action provision of the WPR has drawn the most debate about the WPR's constitutionality and practicability. A congressional review of the WPR conducted in 1988 focused extensively on this issue, and the most significant amendment offered to the legislation is designed primarily to change this provision.²⁸ The amendment has yet to be acted upon, and the issue remains in doubt because of the lack of a clear empirical base to evaluate this provision in theory and in practice. While it is likely that any changes in the WPR would affect the congressional action provision, it is also likely that the proper functioning of the consultation and reporting requirements would largely obviate the need for congressional action to become a focus of executive-legislative hostility over the sharing of war powers.

Conclusions

As noted, this study was undertaken to determine if the WPR was "a necessary and correct reassertion" of Congress's role and power in committing US forces to conflicts abroad. The evidence and analysis offered in this assessment indicate that Congress did act properly in enacting the WPR. The necessity of the legislation was prompted by changes in the international environment that negated premises of shared war-making authority

the Framers had used in dividing constitutional power between the executive and legislative branches. Scholars have argued that a drift toward greater authority for the President has occurred over the last 150 years that Congress aided by surrendering many of its prerogatives through acquiescence when faced with unilateral executive decisions to commit US forces to conflicts abroad. The cost of this neglect, however, was relatively modest given the nature of the conflicts, the forces involved, and the casualties sustained. The character of undeclared wars in the post-World War II era and the context within they took place, however, changed these experiences fundamentally. The WPR, therefore, represented more than anything else congressional recognition that the changing circumstances of undeclared wars had rendered the costs of inattention to its own war powers too great, and also a belief that future military disasters would occur if the skewed division of authority between the branches continued.

Twenty years of practice indicates that the WPR was correct, albeit not perfect, in its intentions and goals. The inherently adversarial relationship that exists when Congress and the Presidency are in the hands of different political parties, coupled with the particularly difficult period of adjustment that US military and foreign policies experienced in the post-Vietnam period, contributed significantly to the adversities the legislation encountered during its first 14 years existence. This led many observers to conclude prematurely that the WPR had failed. While the last six years have not marked a renaissance for the legislation, patterns of executive-legislative behavior during this period have come closer to the model envisioned by the WPR's sponsors.²⁹ Progress has been made, and the sharing of executive-legislative war powers is closer to equilibrium today than it was in 1973.

At the same time, the intention of the WPR has never been fully realized. Some important features have yet to be tested and evaluated, and other components may be either flawed or of dubious validity. Certain problems can be remedied through amendments to the original legislation and, as noted, some have been proposed. Although they will not remove the contentiousness that is bound to accompany the WPR in an area as complex and volatile as war powers, they can strengthen the legislation and allow it to operate more fruitfully in the future.

Beyond the specifics of the legislation, the emergence of a post-Cold War international environment can contribute importantly to more effective utilization of the WPR's provisions in deciding whether to commit US forces to hostilities overseas. The general cold war rationale of "vital interests" in combatting communism, which was cited by the President in unilaterally committing US forces in Korea and Vietnam, has been obviated by the dissolution of the USSR. While "vital interests" still plays a critical role in determining the need to send American forces to wars overseas, the cold war context that allowed the concept to be defined expansively and to be measured primarily in military terms no longer exists. Instead, a more restrictive definition of "vital interests" has now emerged, and its application is measured according to additional standards, especially economic and technological.

Finally, in practical terms, the WPR appears to be gaining greater saliency as a mechanism to ensure executive-legislative agreement in committing US forces to conflicts because of the more ambiguous conditions of the post-cold war world. For example, President Clinton has pledged to consult with Congress before any military action is taken against states involved in ethnic conflicts in the former Yugoslavia. His desire to have Congress endorse any military action symbolizes the greater apprehension that attends considerations of using the US military overseas than was present during the cold war. The executive-legislative agreement to withdraw American forces from Somalia in response to relatively minor casualties is also indicative of a greater reluctance to commit and maintain US troops in hostilities overseas now that the cold war is over. Continuing uncertainty over the larger issues of when and for what purpose US forces should be used in the post-cold war era reflects more basic concerns about sharing war powers that the WPR can address by helping to ensure that a decision to use American military power will be accompanied by careful analysis and a commitment of national will.

¹ Jacob K. Javits, "The War Powers Resolution and the Constitution," in Demetrios Caraley, ed., *The President's War Powers: From the Federalists to Reagan* (New York: Academy of Political Science, 1984), p. 3.

² *Department of State Bulletin*, Vol. 84, May 1984, p. 15.

³ Because the question of how the Constitution divides war powers is subject to interpretation, the subject has been treated extensively by constitutional scholars and historians. See, for example, the views of Professor of History Richard B. Morris in, "War Powers Legislation," *Hearings before the Committee on Foreign Relations*. 92nd Congress, 1st session, S.J. Res 18 & 59. (Washington, D.C.: GPO, 1972), pp. 75-123.

⁴ See, for example, Ronald D. Rotunda, et. al., in "The War Powers After 200 Years: Congress and the President at a Constitutional Impasse," *Hearings before the Special Subcommittee on War Powers of the Committee on Foreign Relations*. 100th Congress, 1st session, S. Res 1012. (Washington, D.C.: GPO, 1989), pp. 383-447.

⁵ See, for example, the views Professor of History Henry Steele Commager in, "War Powers Legislation," *Hearings before the Committee on Foreign Relations*. 92nd Congress, 1st session, S.J. Res 18 & 59. (Washington, D.C.: GPO, 1972), pp. 7-27.

⁶ Wiley Sword, *President Washington's Indian War* (Norman: University of Oklahoma Press, 1985), pp. 81-83, 202-206.

⁷ Albert H. Bowman, "Realism versus Moralism in Foreign Policy: Jefferson, Hamilton, and the Franco-British War," in Demetrios Caraley, ed., *The President's War Powers: From the Federalists to Reagan* (New York: Academy of Political Science, 1984), pp. 5-28.

⁸ Richard H. Kohn, *Eagle and Sword* (New York: Free Press, 1975), pp. 54-72.

⁹ As a result of this impasse, the government was forced to rely on loans and treasury notes to generate funding. Doubts about the financial stability of the government prevented the loans from realizing their full value, and the government verged on the brink of bankruptcy until a peace agreement was reached in late 1814. For a more complete description of this episode, see, Donald R. Hickey, *The War of 1812* (Urbana: University of Illinois Press, 1989), pp. 159-175.

¹⁰ Christopher J. Deering, "The Congress, The President, and War Powers: The Perennial Debate," in James A. Thurber, ed., *Divided Democracy* (Washington, D.C.: Congressional Quarterly Press, 1991), pp. 171-198.

¹¹ The increased speed with which the President could commit US troops to conflicts is illustrated by two examples involving the use of US forces in Korea. In 1871, US forces retaliated against Korean natives to punish them for depredations to Americans, particularly for murdering the crew of the *General Sherman* and burning the schooner, and for later firing on other American small boats taking soundings up the Salee River. A squadron of three ships and a battalion of Marines under Admiral Rogers subsequently attacked, captured, and destroyed five Korean forts. Over a month elapsed between the burning of the schooner and the attack on the Korean forts because of the time required to communicate information about the attacks, obtain presidential approval to retaliate, and assemble the US forces required to carry out the mission. In 1950, President Truman committed US forces to defend South Korea after it had been invaded by North Korea. Truman learned of the invasion the same day it occurred (24 June), authorized the introduction of US forces on 30 June, and several battalions from the 24th Infantry Division on occupation duty in Japan landed in Korea the next day.

¹² A good study on the relationship of public opinion to the conduct of the Korean and Vietnam Wars can be found in, John E. Mueller, *War, Presidents, and Public Opinion* (Lanham: University Press of America, 1985), pp. 23-65.

¹³ The statement is attributed to an unidentified senator by Senator Thomas Eagleton (D.-Mi) who states that it was said to him when the War Powers Resolution was under debate in the Senate. See, "The War Powers After 200 Years: Congress and the President at a Constitutional Impasse," *Hearings before the Special Subcommittee on War Powers of the Committee on Foreign Relations*. 100th Congress, 1st session, S. Res 1012. (Washington, D.C.: GPO, 1989), p. 364.

¹⁴ The effects of the Cambodian incursion in serving as a catalyst for congressional action was significant. See, "Congress, The President, and the War Powers," *Hearings before the Subcommittee on National Security Policy and Scientific Developments*. 91st Congress, 2nd session. (Washington, D.C.: GPO, 1970), pp. 497-504, 539-544.

¹⁵ This statement was made by Senator Claiborne Pell (D.-RI) at the opening of hearings in 1988 to review the War Powers Resolution. See, "The War Powers After 200 Years: Congress and the President at a Constitutional Impasse," *Hearings before the Special Subcommittee on War Powers of the Committee on Foreign Relations*. 100th Congress, 1st session, S. Res 1012. (Washington, D.C.: GPO, 1989), p. 1.

¹⁶ In comments on negotiations at the Versailles Peace Conference, French Premier Clemenceau stated, "Compromise makes a good umbrella, but a poor roof."

¹⁷ One original sponsor of the War Powers Resolution, Senator Thomas Eagleton (D.-Mi), eventually voted against its passage because he opposed changes in the wording agreed to in a compromise with the House version of the bill. Specifically, he believed that the Resolution gave the President a virtual blank check to commence and conduct wars for up to 90 days without congressional authorization. See, Thomas F. Eagleton, *War and Presidential Power* (New York: Liveright, 1974), pp. 168-225.

¹⁸ A description of the War Powers Resolution is not contained in this study because of space constraints and the assumption that the reader is already familiar with its primary provisions. The text of the resolution is contained in, "The War Powers After 200 Years: Congress and the President at a Constitutional Impasse," *Hearings before the Special Subcommittee on War Powers of the Committee on Foreign Relations*. 100th Congress, 1st session, S. Res 1012. (Washington, D.C.: GPO, 1989), pp. 341-345.

¹⁹ The quotation is contained in, Barry M. Blechman, *The Politics of National Security* (New York: Oxford University Press, 1990), p. 170.

²⁰ Franck's quotation is contained in his testimony before the Senate on the War Powers Resolution. See, "The War Powers After 200 Years: Congress and the President at a Constitutional Impasse," *Hearings before the Special Subcommittee on War Powers of the Committee on Foreign Relations*. 100th Congress, 1st session, S. Res 1012. (Washington, D.C.: GPO, 1989), p. 220.

²¹ Pell's statement was made at the opening of 1988 hearings to review the War Powers Resolution. See, "The War Powers After 200 Years: Congress and the President at a Constitutional Impasse," *Hearings before the Special Subcommittee on War Powers of the Committee on Foreign Relations*. 100th Congress, 1st session, S. Res 1012. (Washington, D.C.: GPO, 1989), p. 2.

²² For a more complete assessment of the key provisions of the War Powers Resolution, see, Blechman, *Politics of National Security*, pp. 173-200.

²³ The 1987 episode involved the reflagging of Kuwaiti oil tankers to provide them with US Navy protection. An even better example of consultation between the executive and legislative branches occurred in 1988 following an Iranian attack on a reflagged tanker. President Reagan briefed congressional leaders a day before the US retaliated, and Congress was satisfied with its role in the decision.

²⁴ President Bush did not invoke the War Powers Resolution in seeking congressional approval for using US forces to expel Iranian troops from Kuwait. Instead, the Congress was asked to approve a United Nations Resolution authorizing the use of force if Iraq did not withdraw from Kuwait by 15 January 1991. The Congress gave its assent by a narrow margin. The process served the same purpose, nevertheless, and stands as an example of the spirit of the War Powers Resolution being fulfilled.

²⁵ The Supreme Court has been reluctant to involve itself in specifying the respective war powers of the President and Congress because it sees the issue as essentially a "political question." See, Clinton Rossiter, *The Supreme Court and the Commander in Chief* (Ithaca: Cornell University Press, 1976), pp. 1-10.

²⁶ Abraham D. Sofaer, "The War Powers Resolution," *Department of State Current Policy*, No. 1107, September 15, 1988, p. 3.

²⁷ See, for example, the testimony of Morton Halperin in "The War Powers After 200 Years: Congress and the President at a Constitutional Impasse," *Hearings before the Special Subcommittee on War Powers of the Committee on Foreign Relations*. 100th Congress, 1st session, S. Res 1012. (Washington, D.C.: GPO, 1989), pp. 1107-1145.

²⁸ The Byrd-Nunn-Mitchell-Warner proposal establishes two congressional consultative groups that would interact with the President before US forces are introduced into situations of actual or imminent hostilities. The President would be required to consult with the first group, which would consist of six members of the congressional leadership. A majority of the leadership could then request the President to consult with a larger congressional consultative group of 18 members. The amendment would also remove the 60-day limitation on military involvements that had not received specific authorization by Congress. In the absence of congressional action, the President would be able to continue the conflict as long as he determines is necessary.

²⁹ Congressman Dante B. Fascell (D.-Fl) has championed the more positive approach to the War Powers Resolution's benefits by arguing that its practical effects have been more encouraging than technical compliance with its provisions. See, "The War Powers After 200 Years: Congress and the President at a Constitutional Impasse," *Hearings before the Special Subcommittee on War Powers of the Committee of Foreign Relations*. 100th Congress, 1st session, S. Res 1012. (Washington, D.C.: GPO, 1989), pp. 928-1028.